

**ELECTRONICALLY FILED
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF NEW JERSEY**

JACQUELINE ROSA,

Plaintiff,

v.

BOROUGH OF LEONIA, BOROUGH
OF LEONIA COUNCIL, TOM ROWE in
his capacity as acting Borough Clerk
of the Borough of Leonia, JUDAH
ZEIGLER, in his official capacity as
Mayor of the Borough of Leonia, JOHN
DOE MAINTENANCE COMPANIES 1-
5,

Defendants.

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION,

Plaintiff-Intervenor,

v.

BOROUGH OF LEONIA, NEW
JERSEY,

Defendant.

REMOVAL FROM SUPERIOR COURT
OF NEW JERSEY, LAW DIVISION:
HUDSON COUNTY, DOCKET NO.:
HUD-L-607-18 (CONSOLIDATED)

**NOTICE OF REMOVAL TO THE
UNITED STATES DISTRICT COURT
OF NEW JERSEY PURSUANT TO**

Civil Case No: _____

**TO: THE HONORABLE JUDGES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY, NEWARK**

ON NOTICE TO:

Jacqueline Rosa, Esq.
Seigel Law Firm
505 Goffle Road
Ridgewood, NJ 07450
Pro Se Plaintiff

Gurbir S. Grewal, Attorney General of New Jersey
c/o Phillip J. Espinoza, Esq.
Deputy Attorney General
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625
**Attorney for Defendant State of New Jersey
Department of Transportation**

PLEASE TAKE NOTICE that Defendants Borough of Leonia, Borough of Leonia Council, Tome Rowe, and Judah Zeigler (collectively referred to herein as “Defendants”) hereby remove the above captioned matter pursuant to 28 U.S.C. §1441, et seq. on the basis of federal question jurisdiction, and in support of same, by and through their attorneys, respectfully say:

1. True and accurate copies of all of the known pleadings, processes, and Orders, which constitute all of the known filings served upon Defendants and served by Defendants are designated as Exhibits “A” through “PP”.

2. Plaintiff Jacqueline Rosa (“Rosa”) commenced the above-captioned action *pro se* on or about January 30, 2018 by filing with the Superior Court of New Jersey, Bergen County (Law Division) a Complaint in Lieu of Prerogative Writs (attached hereto as Exhibit “A”) challenging the Borough’s adoption of traffic controls on January 22, 2018 which amended Section 194 of the Borough Code. The matter was captioned JACQUELINE ROSA v. BOROUGH OF LEONIA, BOROUGH OF LEONIA COUNCIL, TOM ROWE in his official capacity as acting Borough Clerk of the Borough of Leonia, JUDAH ZEIGLER, in his official capacity as Mayor of the Borough of Leonia, JOHN DOE MAINTENANCE COMPANIES 1-5, and assigned a Docket Number of BER-L-750-18.

3. On February 6, 2018, Rosa’s Complaint was transferred to the Hudson vicinage (see Exhibit “B,” Order transferring venue dated February 6, 2018), and assigned a Docket Number of HUD-L-607-18.

4. Rosa then filed an Amended Complaint in Lieu of Prerogative Writs on February 12, 2018 to add a claim pursuant to 42 U.S.C. §1983 alleging a violation of her civil rights based upon the Borough's adoption of the Ordinance on January 22, 2018, which amended Section 194 of the Borough Code, and to add a claim alleging that said Ordinance violated the Interstate Commerce Clause (see Exhibit "C," a true and accurate copy of Rosa's amended Complaint).

5. On March 27, 2018, Defendants filed an Answer and Affirmative Defenses to Rosa's Amended Complaint. (attached hereto as Exhibit "E").

6. On or about May 4, 2018, Rosa moved before the Hudson County Court for an Order to Show Cause seeking a preliminary injunction against the Borough of Leonia (see Exhibit "F," and Exhibit "G," a true and accurate copy of Plaintiff's brief and updated brief in support of an Order to Show Cause seeking a preliminary injunction).

7. On May 7, 2018, the Honorable Peter F. Bariso, A.J.S.C., signed two orders granting, in part, Rosa's Motion for an Order to Show Cause, which Orders set a truncated briefing and hearing schedule for May 16, 2018 (see Exhibits "H" and "I," a true and accurate copy of the two orders to show cause entered by Judge Bariso). Defendants filed and served their Opposition in accordance with the two Orders on or about May 11, 2018, and Plaintiff served her Reply papers on May 14, 2018 (see Exhibits "J" and "L," a true and accurate copy of the opposition and reply papers filed in opposition to and in support of Rosa's Motion for an Order to Show Cause). The hearing date was

then adjourned by the Court from May 16, 2018 to May 21, 2018 (see Exhibit “N,” Defendants’ objection to Plaintiff supplementing her reply brief).

8. On May 25, 2018, an Order was entered by the Superior Court denying Plaintiff’s Motion for an Order to Show Cause seeking a preliminary injunction against Defendants (see Exhibit “O,” Order dated May 25, 2018).

9. On June 8, 2018, the Department of Transportation of the State of New Jersey (hereinafter referred to as “DOT”) filed a Consent Order permitting it to intervene as a plaintiff in Rosa’s lawsuit against Defendants (see Exhibit “P,” Consent Order).

10. On June 11, 2018, as an Intervenor, the DOT filed a Complaint for declaratory judgment and action in lieu of prerogative writs under the same docket number as Rosa’s Amended Complaint, Docket number HUD-L-607-18, naming only the Borough of Leonia as a Defendant (hereinafter referred to as the “Borough”) (see Exhibit “Q,” filed copy of the DOT’s Complaint).

11. The Borough answered the DOT’s Complaint on July 2, 2018. (see Exhibit “R”, filed copy of Answer to DOT’s Complaint)

12. On July 11, 2018, the DOT filed a Motion for Summary Judgment against the Borough seeking a declaratory judgment and a permanent injunction (see Exhibit “S,” filed copy of the DOT’s Motion for Summary Judgment) and which motion was opposed by the Borough on August 21, 2018.

13. On July 16, 2018, Rosa also filed a Motion for Summary Judgment and for Punitive Damages against Defendants (see Exhibit “T”, filed copy of

Rosa's Motion for Summary Judgment), and which motion was also opposed by the Borough on August 21, 2018.

14. On August 21, 2018, the Borough also cross-moved for the dismissal of the DOT's Complaint and Rosa's Complaint for the failure to state a claim (see Exhibits "V" and "W," Borough's Opposition and Cross-motions), and which Cross Motions were opposed by the DOT and Rosa on August 24, 2018 and August 27, 2018, respectively.

15. On August 30, 2018, the Court granted the DOT's Motion for Summary Judgment and entered an Order invalidating the Ordinances at issue and permanently enjoining the Borough from enforcing said Ordinances through the use of signage, etc. (see Exhibit "BB," Order dated August 30, 2018). The Court, however, denied Rosa's Motion for Summary Judgment and also denied Defendants' cross-motions to dismiss the DOT's and Rosa's Complaints, without prejudice (see Exhibits "AA," "CC," and "Z," Orders (3) dated August 30, 2018).

16. On or about September 17, 2018, the Borough adopted new Ordinances for the control of traffic within its borders consistent with the Opinion of the New Jersey Superior Court granting the DOT's motion for summary judgment.

17. On October 12, 2018, the Court granted the DOT's and Rosa's Motions to Amend the Complaint to challenge these new Ordinances (see Exhibits "MM" and "LL," Orders dated October 12, 2018)

18. The Amended Complaint filed by Rosa on October 12, 2018 abandoned her challenge to the ordinances that had been invalidated by the Court on August 30, 2018, and instead replaced all references to same with the new Ordinances adopted by the Borough of Leonia on September 17, 2018. It was, thus, an entirely new Complaint.

19. In the Sixth Count of the Amended Complaint filed on October 12, 2018, Rosa makes a claim for violation of her civil rights “under code **42 U.S. Code §1983**” and alleges that her “**Fifth Amendment** rights of basic **liberty**” and “constitutional **right to travel** freely without being sopped and questioned” are being violated. (see Exhibit “OO,” Rosa’s Second Amended Complaint) (emphasis added).

20. In the Seventh Count of the Amended Complaint filed on October 12, 2018, Rosa makes a claim for violation of the “**Interstate Commerce Clause**” and summarily alleges that the Borough has discriminated against non-residents and commuters within and out of New Jersey.

21. In light of the foregoing, it is clear that Plaintiff Rosa alleges violations of the laws of the United States. The United States District Court therefore has original subject matter jurisdiction over the Complaint pursuant to the provisions of 28 U.S.C. §1331, and the Complaint is one that may be removed to this Court by the Defendants under the provisions of 28 U.S.C. §1441, et seq. and pursuant to 28 U.S.C. §1446(b)(3).

22. In addition, the United States District Court also has supplemental jurisdiction over Rosa's and Plaintiff/Intervenor's consolidated state law claims pursuant to the provisions of 28 U.S.C. §1367.

23. Thirty days have not elapsed since the filing of the Amended Complaint, and therefore this Notice of Removal is filed within the time provided for removal of this action by 28 U.S.C. §1446(b)(3) and the Federal Rules of Civil Procedure.

24. By filing this Notice, the Board Defendants do not waive any defenses that may be available to them, specifically including, but not limited to, the failure to state a claim for which relief may be granted, expiration of the statute of limitations, the immunities afforded to them under the Tort Claims Act, or the failure to exhaust statutory and/or administrative remedies.

25. Since this is the initial paper filed with this Court on behalf of the Defendants, I hereby certify to the best of my knowledge, information and belief after reasonable inquiry, pursuant to L. Civ. R. 11.2, that the within matter or matters of controversy are not the subject of any other pending action, arbitration, or administrative proceeding other than the motion to intervene in the Superior Court action that was filed by the City of Englewood on or about October 24, 2018.

26. I further certify that a copy of this Notice of Removal has been served upon Plaintiff and Plaintiff/Intervenor and filed with the Clerk of the New Jersey Superior Court in Hudson County.

WHEREFORE, for all of the foregoing reasons, the Defendants respectfully request that this action proceed in the United States District Court District of New Jersey, in the City of Newark, as an action originally commenced therein.

Respectfully submitted,
CLEARY, GIACOBBE, ALFIERI, JACOBS, LLC
Attorney for Defendants

s/ Ruby Kumar-Thompson
Ruby Kumar-Thompson, Esq.

Dated: October 31, 2018